

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, August 8, 2001, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Russ Bayer, Jon Carlson, Steve Duvall, Linda Hunter, Gerry Krieser, Patte Newman, Greg Schwinn, Cecil Steward and Tommy Taylor; Kathleen Sellman, Ray Hill, Mike DeKalb, Jason Reynolds, Brian Will, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

**STATED PURPOSE OF MEETING:** Regular Planning Commission Meeting

Chair Russ Bayer called the meeting to order and requested a motion approving the minutes for the regular meeting held July 25, 2001. Hunter made a motion for approval, seconded by Krieser and carried 9-0: Bayer, Carlson, Duvall, Hunter, Krieser, Newman, Schwinn, Steward and Taylor voting 'yes'.

**CONSENT AGENDA**  
**PUBLIC HEARING & ADMINISTRATIVE ACTION**  
**BEFORE PLANNING COMMISSION:**

August 8, 2001

Members present: Bayer, Carlson, Duvall, Hunter, Krieser, Newman, Schwinn, Steward and Taylor.

The Consent agenda consisted of the following items: **CHANGE OF ZONE NO. 3333; SPECIAL PERMIT NO. 1923; SPECIAL PERMIT NO. 441D; SPECIAL PERMIT NO. 1435C; CITY/COUNTY FINAL PLAT NO. 99004, CROOKED CREEK ADDITION; FINAL PLAT NO. 01004, ASPEN RIDGE ADDITION; and FINAL PLAT NO. 01019, ASHLEY HEIGHTS ADDITION.**

Steward moved to approve the Consent Agenda, seconded by Newman and carried 9-0: Bayer, Carlson, Duvall, Hunter, Krieser, Newman, Schwinn, Steward and Taylor voting 'yes'.

Note: This is final action on Special Permit No. 1923, Special Permit No. 441D, the Aspen Ridge Addition Final Plat No. 01004; the Ashley Heights Addition Final Plat No. 01019; and the Crooked Creek Addition Final Plat No. 99004 (on that portion within the City's jurisdiction),

unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

**COUNTY SPECIAL PERMIT NO. 189**  
**TO CONSTRUCT AND OPERATE A**  
**HEALTH CARE FACILITY ON PROPERTY**  
**GENERALLY LOCATED AT**  
**SOUTH 148TH STREET AND OLD CHENEY ROAD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

August 8, 2001

Members present: Taylor, Newman, Carlson, Hunter, Schwinn, Duvall, Steward, Krieser and Bayer.

Planning staff recommendation: Conditional approval.

Mike DeKalb of Planning staff submitted a letter in opposition from Rosanne McClarnon.

Bayer observed that the McClarnon letter indicates the Planning Commission has already approved this application. Bayer clarified that the Planning staff recommends approval but the Planning Commission has not yet made a decision or taken any action.

Proponents

**1. Kent Seacrest** appeared on behalf of Christian Heritage Children's Home for a special permit for a health care, philanthropic institution.

**2. Gregg Nicklas**, President of **Christian Heritage Children's Home**, testified in support. Christian Children's Home is a nondenominational, nonprofit, tax exempt 501(c)(3) organization providing homes for abused and neglected children who are unable to be with their own families. Christian Heritage currently has a facility in rural southern Lancaster County, licensed by State of Nebraska, Health and Human Services, for 8 boys between ages 12 and 18. Christian Heritage provides group home services in a family setting. The Schroeders, who are the primary house parents of the boys home in southern rural Lancaster County, were also present. They live there 24 hours a day, five days a week. On their two days off, there is another couple that comes in to provide care. There is also late night staff to provide 24 hour supervision. Christian Heritages uses the Boys Town Family Home model in caring for children.

In 1985, Christian Heritage opened a second home in rural Lancaster County for adolescent girls, which is licensed for 8 and staffed by live-in house parents.

The children served are in classrooms like any other child; they participate in extra-curricular activities—basketball, wrestling, football, and cheerleading, and work for local fast food restaurants. The goal in caring for the children is to help reunite them with their families whenever possible. If the children cannot return to their own families, foster families are recruited and trained. Christian Heritage is licensed as a child caring and child placing agency.

Because of the increased number of abused and neglected children in Nebraska, in 1999, Christian Heritage was selected to open two new children's homes for central Nebraska, in Buffalo County. They constructed a boys home and a girls home on 14 acres of land in a rural environment and constructed the two homes side by side.

The rural setting is desired because a rural environment provides a very precious commodity—space--which assists in supervision in providing distance from distractions and adverse influences, and there are unlimited recreational activities.

In November, 2000, the Lincoln office of State Health and Human Services issued a RFP for two new children's homes in the Lincoln/Lancaster County area. A primary consideration was that the children from Lincoln currently attending the Lincoln Public Schools (LPS) will be able to be maintained in LPS. Christian Heritage has selected the site at 148<sup>th</sup> & Old Cheney Road.

Christian Heritage has contacted the LPS administration and has been informed that any child that has been in the system for two years or longer can continue to attend, no matter where they live. This site is in the Waverly School District but the majority of the children served at the Christian Heritage Children's Home will be from LPS and Christian Heritage will provide the transportation. Two homes can be built side by side at this location, duplicating the program in Buffalo County. Having the homes together enables them to maximize the supervision capabilities of the staff.

Nicklas showed the site plan, advising that they have opted to use the existing entrance off of Old Cheney Road. The proposal is in three phases. The first phase will be construction of the two homes which will be built with the identical floor plan as the homes in Kearney. The facilities are designed to create a home environment that serves 8 children, the house parents and their own children. They envision construction in the spring of next year for fall occupancy for the boys, and construction for girls in the fall of 2002 for occupancy in the spring of 2003.

The funds for this purchase and construction will be raised from charitable contributions, individuals, congregations, etc.

The first phase also includes a small office building to hold fund raising and administrative staff. Because this is a 45 acre site, there will be adequate space for potential third and fourth units, should the Department of Health and Human Services deem there a need for additional homes. They would be licensed to serve a maximum of 8 children in each building.

Nicklas advised that Christian Heritage has talked to the rural water district and they will need to submit a \$5,000 application. That would be their first choice for water service. (Note: Nicklas corrected this testimony later in the question and answer period, stating that the homes in Kearney are on well water and that they would want this facility to also be on well water).

**3. David Krogman**, Program Director, who offices out of the Hickman location, testified in support. His primary responsibility is to insure the quality of care and services delivered to the children. The homes would be staffed with married couples. The actual license that would be obtained would be for ages 12 to 18. The average age of the youth cared for in homes like these currently operated is 15. The average length of stay is 6-9 months. Because Christian Heritage is a family faith-based nondenominational ministry, they desire to place families who are strong and stable into these units and want to provide the most family-like setting possible. Christian Heritage utilizes the program from Boys Town, the "Family Home Program", which utilizes social, academic and independent living skills that the Christian Heritage staff model, teach and encourage the youth to exhibit and demonstrate, not only on the site but in local neighborhoods and communities.

While the children are cared for at Christian Heritage, the desire is to see each youth experience a changed life physically, socially, intellectually and spiritually. We look for children to possess the characteristics that will enable them to be successful while at Christian Heritage in a family setting. Being a private and independent ministry, Christian Heritage holds the ability to accept or deny every youth referred to them. Krogman, along with the team selection committee, looks at every referral and determines which of the children possess those characteristics. No child referred to Christian Heritage that needs residential treatment for drug and alcohol or psychological disorders will be served at Christian Heritage. In addition, the youth who have been adjudicated as sexual offenders will not be served at Christian Heritage. In the 20 years that Christian Heritage has been providing care to children, they have served well over 600 children, and over those years Christian Heritage has been contacted by phone, in person, and through letters, from adults who now live in Lincoln and Lancaster County who expressed appreciation for the services that have been provided.

**4. Sheriff Terry Wagner** testified to the Sheriff's Department calls for service at Christian Heritage. He had compiled the data for calendar year 2000, resulting in 20 total calls for service at the two existing facilities—11 at the girls home and 9 at the boys home. 10 of those were runaways; 10 were criminal in nature. Not all of those crimes were committed by residents of the home—in a couple of the situations, the residents of the Children's Home were

the victims. The crimes that they did respond to at the home included assaults, generally either between residents or a resident and staff member, and all were misdemeanor and minor in nature. For example, vandalism against a Play Station; holes in the walls by upset youth. Two calls were sexual in nature but both of them had been children where the youth were the victims—one occurred at school and another was when a young resident was on runaway and engaged in sexual contact with an older male.

Carlson inquired how this compares to similar facilities in the county. Wagner had not done any comparison figures, but it seems like the most recent in his mind was the Midlands Group Home south of the County line where runaways had gone to Firth to steal cars and vandalize businesses. It really wasn't any comparison. The Lancaster County Sheriff's Department did not respond to the minor incidents because it was not in Lancaster County.

**Seacrest** then proceeded to testified, stating that the applicant held a well-attended neighborhood meeting. They heard a lot of concerns and want to address those concerns that can be addressed.

With regard to the concern about overburdening the Waverly school system, Seacrest does not believe that concern is legitimate because the bulk of these kids are intended to come from Lincoln and will attend LPS. As far as taking property off the tax rolls and thereby impacting the Waverly School District, Seacrest advised that this property today pays \$575.00 to Waverly School District. He agreed that the property will be taken off the tax rolls, but that is a state policy for nonprofits that do charitable work. With regard to water and sewer, Seacrest pointed to Condition #4.2 which will not allow the applicant to occupy this property without approval of the water and sewer by the Health Department. In addition, Seacrest submitted a proposed motion to amend Condition #1, which are promises they made to the neighbors:

--This approval permits a philanthropic institution for up to 32 mild to moderate needs (excluding high needs) children.... The permittee and its successors and assigns shall not serve any child or adolescent at the philanthropic institution who has been adjudicated as a sexual offender. Each residential building and the office building shall be residential in design and have:

- (1) A two and one-half inch in twelve inch pitch roof or steeper;
- (2) A nonreflective exterior siding material which is or simulates wood, stucco, brick or stone;
- (3) A nonreflective roof material which is or simulates asphalt or wood shingles, tile or rock; and
- (4) No air conditioners on the roof.

Seacrest submitted that there are a lot of needs for this in Lincoln and Lancaster County. The Planning Commission needs to help site these needs. We do a better job with these kids if we can get them in a rural setting. Some do better in a rural setting and he believes this is a good location.

Steward noted that the examples are distinctive by their lack of typical residential landscape and he wonders if that is just age and stage, or is it intentional that it be stark building on prairie landscape? Nicklas' response was that they purchased raw land and constructed the homes to particular specifications to serve the children. They did plant 3 acres of grass around the homes and a lot of trees and shrubs but it is all new.

Steward inquired whether the Christian Heritage programs are in any way designed specifically for work activity to take advantage of this rural setting, i.e. productive agriculture, gardening, etc. Nicklas responded, "not specifically". In the past they have had 4-H programs for the children raising animals and alfalfa, but it's not specifically designed for that. Seacrest added that they do have children who work after school and in the summer and they have in the past been employed by local farmers. Krogman added that this space provides for basketball and volleyball facilities, and they are currently in the process of installing a softball area. The rural setting is an ideal site to provide these opportunities.

Nicklas corrected his previous testimony regarding the well. He had stated previously that the homes in Kearney were on rural water, but they are on well water and that is why it would be Christian Heritage's choice that this facility also have well water.

**5. Tim Koehn**, Service Area Administrator for the State Department of Health and Human Services (HHS) for the southeast Nebraska service area, testified in support of Christian Heritage. You may have heard the Governor speak about the HHS plan, the "Nebraska Family Portrait", an action plan to work with our kids. One of the objectives in that plan comes to mind--Nebraska and its community have certain responsibilities and rights related to our children and we need to work together to care for our youth and help families stay together. In HHS for Lancaster County, we have 932 state wards; 632 are placed outside of their home, and of that number 183 are actually placed out of Lancaster County. Last fall, we did an inventory of our kids and their needs and we are seeing a shift away from group homes. We put out the RFP for group home level of care. If we have a gap in service, the whole system gets bogged down. If we don't have a continuum of care, kids get stuck in the system.

HHS has kids who are in families who are state wards; HHS offers wraparound in-home services; then we have kids who may be in a high restrictive facility who have committed some criminal acts. Christian Heritage is a group home providing the middle of that continuum of care.

Most of the children served at Christian Heritage will be returning home or to the home of a relative; they go to public school; they are involved in extra-curricular activities and community activities. Christian Heritage will not serve youth who are addicted to drugs; with severe mental health issues; sexual predator; severe developmental disability; or a youth adjudicated as a juvenile delinquent. These children are served by different programs.

The RFP was a competitive process. Christian Heritage came out on top. The selection was not made lightly. They have 20 years of experience and have done a good job. Proposals were rated by experience of serving this type of youth; the ability to get the program up and going; compatible philosophy, mission and set of goals; competent staff based on past experience; a plan for addressing the needs of kids; a plan showing understanding characteristics of the needs of the population; a reasonable budget; staffing; adequate training for staff; and a link in the community. HHS is confident of the work done by Christian Heritage.

**6. Pat Kahm**, 6711 Park Crest Drive, testified in support. She has known the Christian Heritage people for almost 20 years. She owns a private human resources consulting firm and served on the Christian Heritage board for the last 6-7 years. Christian Heritage is a center with a really strong foundation—operated in a very prudent, practical business oriented way; they have very strong goals; they work very hard to be cost efficient; and they are careful in how they select and train their staff. These people do not make large sums of money, yet they have had very dedicated people. It is a committed group of people. They work their hearts out to make this thing go and create as much normalcy as possible for a group of kids. They continue to be able to attract quality staff. She assured that it is a very professional and committed group. This facility will do way more good for the community than it ever could any harm.

**7. Ed Patterson**, 2108 Q Street, believes this is an example of the “fair share” principle. We in the Malone Neighborhood deserve our fair share of street maintenance, sidewalks, sewers, etc., and we deserve no more than our fair share of the social responsibility for the community of Lincoln and Lancaster County. It is easy for people to suggest putting all of the group homes and the “out-of-hand behavior” over on this side of the fence. But that does not make in the long run for a stable, maintainable living system for a city of any size. From what he has heard, this sounds like an excellent, well planned operation.

**8. Jeff Krejci**, President of First State Bank of Hickman, prior City Council member in Hickman, and volunteer football coach at Norris High School, testified in support. In 1994, he and his family moved to within one mile of the boys Christian Heritage home and he testified to the fact that they have not had any problems in that location. He has had the opportunity to coach a couple of the boys and is excited about the way they matured and fit in with the student body. As a City Council member and banker, he has knowledge that the Christian

Heritage staff are professional with a lot of integrity. The close neighbors to the proposed facility should talk with him if they have concerns. His family walks by the home every day and they have not had any problem at all with the home's residents.

It was clarified that there are 8 boys in the Hickman home.

**9. Wayne Wiley**, 6501 So. 148<sup>th</sup>, ½ mile south of the proposed site, testified in support. He has been acquainted with Christian Heritage for about 10 years and he admires what they have done for the kids. He believes this will be a real asset to the community and will fit in well.

**10. Joel Sartore**, who owns the farm across the road ½ mile north, testified in support. He has not known any of the applicants for more than two weeks, but he believes they run an outstanding program; there are no law enforcement problems; four more houses are not going to make a big difference. The concern is that the office look and act like a house. They do not want fund raising/commercial activity out there. In addition, the facility should never be allowed to house adult or juvenile violent offenders.

#### Opposition

**1. Fred Wagner** stated that he is not going to speak against or for this proposition. He just has three concerns: 1) citizen notification; 2) zoning procedures; and 3) due diligence. With regard to citizen notification, Wagner noted that there was a sign posted on the property, but no one in an automobile could read it. He first heard about this Saturday afternoon a week ago when he received the letter from the Planning Department about this hearing. The letter stated that it was a "health care facility" as opposed to a group home. The residents of the community have not had ample opportunity to form an opinion about this decision. The plan is to put four group homes on 47 acres—each home will have 8 people and a supervising family. He does not believe this fits the definition of a health care facility. If two organizations operated two 8-patient health care facilities on city lots adjacent to each other, they'd be zoned as a group home. This is being zoned as health-related.

Wagner is the neighbor to the east with one 285' well and the water will kill trees. It is not drinkable. He has 250' of laterals for a house of four and in the wintertime they have to take short showers and only flush solids to keep the laterals from backing up. The percolation is horrible. He advised Christian Heritage to look into some other way of sewage disposal other than a septic system. He requested that the Planning Commission consider his request to table this issue until the people of the community have ample opportunity to make a decision and come together as a group.



**2. Andy Stellato**, Rt. #1, Box 46, Walton, testified in opposition with concerns about safety for their property and their children. If built, this facility will be less than two miles from his home. The information meeting indicated that these were good kids that need some special help because they can no longer live with their parents. But they would include children with hyperactivity, attachment disorder, aggressive behavior to themselves or others, “improper” sexual behavior, attention deficit disorder and depression. This is a plan to put 32 children with special needs concentrated on 47 acres. If all four group homes go in, there will be children from 8-18 years of age. The supervising families also have young children.

Since Christian Heritage is a nonprofit, that property will come off the tax rolls and will have an impact on the Waverly School District. He acknowledged that Health and Human Services asked that the children be kept in their same schools and that there would be no added burden to the Waverly School District, but when pressed about transporting the children to the schools in Lincoln, Christian Heritage indicated that they would purchase other vehicles if needed to get the children to all the schools. He believes this is a huge undertaking. Stellato also does not believe that all of the children will participate in after-school activities. Some of the children will be coming home and then the vans will have to go out again to pick up the others. There are a lot of logistics involved. Then there are those working in Lincoln and they are not allowed to drive. So there is a transportation issue. His fear is that Christian Heritage will give this a try and will determine that it is impossible to transport each and every one of the kids to school, activities and work. Then the logical option will be to send the children to Waverly schools on buses. The Waverly School District is not equipped to deal with 32 special need students. Since Christian Heritage will be off the tax rolls, they will not be contributing to the school district. Their neighbors in the Waverly School District will be taking care of these children. Stellato believes that Christian Heritage is a business–nonprofit–but still a business. At the informational meeting they stressed that the neighbors should be understanding, but Stellato believes that it seems like there is no consideration given to the neighbors.

Stellato believes that their quality of life will change; their security will change; there will be a big burden on the school district. This facility should either be closer in to Lincoln or in Lincoln so that they can transport the children easier.

Approximately 15 people stood in the audience in opposition.

Steward asked Stellato for the ages of his children. Stellato’s children are 8 and 13. Being an older parent of young children, it’s hard enough and it will be a big challenge for a young couple as the house parents. He believes that this facility will end up being 32 children.

Steward asked Stellato why he lives on an acreage. Stellato married a country girl and they have lived in the country since 1984. Steward inquired whether Stellato believes the country is the same as it was when he moved there. Stellato agreed that it is not--everything changes.

The Beltway considerations will have an impact. The biggest change was graveling the road with cars now going 60-70 mph. His children are not allowed to go biking on that road.

**3. Ron Doty**, 4832 So. David Circle, who owns land adjacent to the proposed facility, testified in opposition. His concern is that he never received notification about this application and he has not had an opportunity to research this matter. He noted that the Hickman facilities had 20 sheriff calls. This proposal would equate to double the number of calls. He would like an opportunity to do this research. He has also heard that there was a problem facility in Beatrice that was run by Christian Heritage. This application needs to be tabled to give him an opportunity to do some more research on the proposal. He purchased the land 5 years ago with the intent of building a home on 20 acres.

Bayer advised the audience that the Planning Commission is the recommending body and this application will go to the County Board for another public hearing in three to four weeks. Even if the Planning Commission makes a recommendation today, there is still time to do further research.

**4. Dean L. Petersen**, 14400 Old Cheney Road, testified in opposition. He first received notice a week ago and he attended the neighborhood meeting. The water source is a concern – none of the neighbors are able to get quality water wells. Rural Water District #1 could provide the service, but Petersen has been told that Christian Heritage has made no contact with the Rural Water District manager. Who will provide emergency services? At the neighborhood meeting, the neighbors were advised that the facility would depend on the Bennet Rural Fire Department; however, no contact has been made with them either. The Bennet Rural Fire Department does not have the facility to handle this additional area. In addition, Petersen does not believe Christian Heritage has made any contacts with the Waverly Superintendent or the Board. Christian Heritage has not purchased the property—they have a option to buy the property based upon the approval of this use. They already own 58 acres in Hickman which is already off the tax rolls which could support expansion. They will be penalizing the taxpayers for the \$80.00 per child per day from the Nebraska Department of Welfare and Human Services.

**5. Loren Kampschnieder**, 6201 S. 176<sup>th</sup> Street, Walton, testified in opposition. His primary concern is the safety of his daughter. They know an individual who is familiar with the type of kids placed in these types of homes. This individual has indicated that if they lived in the area of one of these homes, they would not let a 7-year-old girl outside for one minute. The generic Group Home contract provided by DHHS states that two or more of the following must be present for considering the use of Group Home Care: a) the child is unable to function in a less restrictive setting according to the plan developed by the Multi-disciplinary team; b) the child requires supervision by staff trained in behavioral management techniques; c) the child demonstrates a history of difficulty with adapting to family and community circumstances; d) the child requires structured program including service planning on a daily basis; e) the child

exhibits the following behaviors or characteristics in the mild to moderate range which is defined as few if any conduct problems and cause minor to moderate problems for themselves and others including but not limited to: violent tendencies, attachment disorders, truancy as a secondary symptom of abuse and/or neglect, verbally abusive, destructive of property, aggressive behavior (including sexual), and self-destructive; and f) the child has persistent or unpredictable behavior that may jeopardize the health or safety of self or others.

Kampschnieder has also talked with the volunteer firemen near the Christian Heritage homes in Hickman and they have had to find approximately one runaway a month. The sexual problems are a concern to Kampschnieder.

Kampschnieder requested more time because of the issues that need to be addressed. He contacted 25 neighbors—15 were against, 3 were undecided and 7 were not at home. He needs additional information.

**6. Shawn Hilbert**(sp), who lives 1/8 mile from the proposal, testified in opposition. She has two children that need to be considered. It is her belief that the children would be better served in a foster home environment rather than group home. You are taking them out of the city and putting them in a home with other troubled children. They would get a lot more support, counseling and attention if they were in a foster care environment. Parents of teenagers know that if you have 32 teenagers involved in activities, you're talking about 32 drivers and 32 vans. Downtown Lincoln is about 17 miles from her home. This is a lot of miles and a lot of transportation issues. At the informational meeting, the applicant was clear about the type of children. It was mentioned that there were no "recent" sexual offenders, which she was told would mean six months. She believes six months equates to current and an ongoing issue and they are not rehabilitated.

Hilbert further advised that the newspaper has published three articles about Christian Heritage children in the last six years. In the summer of 1995, one girl was a runaway who vandalized a neighbor's home, and the other were two boys who stole a vehicle and were found in Utah. In November, 2000, two children from the Hickman home assaulted a 10-year-old child on a school bus. These children do have issues. She cannot imagine being able to take care of a toddler and infant of your own and being able to provide any quality time, counseling or support to eight troubled teenagers. These house parents already have their own families and are being asked to take on responsibility for 8 more teenagers. Also, there is no security in these homes.

**7. Rick Hodtwalker**, 135<sup>th</sup> & Old Cheney Road, which is 1 mile west, testified in opposition. You need 20 acres to build a house in the county and this allows four houses and an office building on this property. When the taxes get so high on our farm that it does not support itself, he is hopeful that they will be afforded the same courtesy to change the zone on their farm to put in this kind of density.

**8. Dan Ernst, Superintendent for School District 145 in Waverly,** acknowledged that the President of Christian Heritage did leave a voice mail message and he has not gotten back to him. Waverly does have some concerns as a school district. Waverly will provide an appropriate education for any resident of its district. We thrive on working to help kids. If we have a group home or wherever kids come from, we will provide a quality education. He is also concerned about notification from the Planning Department. Anything that affects the school district needs to be sent to Waverly Public Schools.

The Commission has heard today that these kids fit in well at Norris. Ernst has talked with the Norris administrator and the comment was that working with the officials of Christian Heritage has been very positive. Another comment that was made by the Norris School District was that there is a disproportionate amount of problems that result from having these kids in the school.

The request right now is for those students to maintain enrollment at LPS, but legally that would be through the option enrollment program which allows for the students to maintain that enrollment provided they have had two years successive experience. That also means that there could be other kids that do not meet the two-year requirement. Those students would also have a good likelihood of attending the Waverly School District, meaning Eagle Elementary, Waverly Middle School and Waverly High School. The point is that transportation is a concern. If there are problems on buses, it is something that must be taken seriously.

Ernst has also heard the categorization of the students as “mild to moderate needs” and he is at a loss as to what that transpires into with respect to special education needs. He believes some of the children will need special ed services.

The loss of valuation is an impact to the district and it is passed amongst the remaining taxpayers. The \$575 will be more in the following years.

Educationally, Ernst believes that education is best accomplished when students have stability in their lives. He also heard today that one of the goals would be that these students would change their lives through the participation with Christian Heritage. He supports this philosophy. Many times he gets phone calls from people that want to send their children to the Waverly School District simply because it is a smaller school district, consisting of 1700 students, and there is great opportunity for teachers and staff to make great impacts on children. Some of the people will desire that their kids be in the Waverly system and this will impact the school district from a cost and transportation standpoint. However, Ernst assured that whatever the decision, Waverly will meet the challenge educationally.

Ernst suggested that if we have something that is working in the Hickman area and there is room for expansion, that should be entertained first. If the education system they are currently in is a system that they desire to continue in, it seems like maybe the best place for a location would be within the LPS school district.

Steward asked what percentage of children in the Waverly School District have these similar disorders. Ernst did not have the answer; however, special ed averages about 18.8%. Steward wondered whether that would be considered high or low. Ernst's response was that it is always higher than you would like it to be. All kids are different and all kids are unique. That number would be somewhat low compared to some of the other school districts in our conference and a little bit higher than some.

Hunter pondered that special needs as defined by the school district would include things such as speech therapy, etc. Ernst stated that it could be a handicap condition that requires speech therapy or occupational therapy. "Mild and moderate" would allow students to receive special ed programming. Hunter then suggested that the categories that the Waverly School District may consider as special needs may be different than the special needs considered by a group home. Ernst agreed, stating that some of the apparent behaviors of these young people sound like they may be what we in education would term as behavioral disorders and there are some that may require a higher level of service.

Ernst also observed that it is important that kids don't move in and out of school systems. If that is in the plan, he is totally opposed. They need stability in education.

#### Staff questions

Hunter inquired how we are able to authorize 4 residential units on an area qualified for one single family residence on 20 acres. Mike DeKalb of Planning staff stated that it is a different definition. Single family residential is allowed in AG--1 unit per 20 acres. This application is coming forward as one premise, one ownership, one type of use. The provision is found in Article 13 of the County Zoning Resolution, which is a philanthropic institution use. This proposal clearly fits within that umbrella as one type of use, one campus, one premise. The distinctions as far as the way it operates all fit within that definition as well. Group homes have been brought up but there is a separate definition for group homes and they are allowed by conditional use in the AG district for 2-15 people receiving care. Under a conditional use, you could put in a group home with ½ mile spacing and they do require a public hearing.

Hunter is concerned about the concept of putting an office facility in this environment. She also wants to know why they cannot expand the Hickman facility. DeKalb advised that the Lincoln zoning code used to have a provision to allow philanthropic, nonprofit institutions by

special permit, i.e. typically used by churches and religious organizations. We have had large offices built in Lincoln using that provision. In 1979, the city removed that provision; however, the County maintained that provision.

As far as expanding the Hickman facility, DeKalb suggested that would be question of the applicant. That would be in the Hickman jurisdiction and would not come before this board.

Steward asked staff to review the matter of process, timing, and notification. DeKalb stated that the Planning Department sent letters to all property owners within one mile according to the County Assessor. This letter is mailed 10 days in advance of the hearing. The sign was posted on the property at the corner of 148<sup>th</sup> and Old Cheney on July 17<sup>th</sup>, and a legal ad was published as required in the newspaper. All legal notification requirements have been met.

Newman asked whether there is a limit on the number of employees. DeKalb stated that the code does not limit the number of employees, but the language of the proposed special permit allows up to 16 employees.

Schwinn inquired whether the special permit goes with the property. DeKalb acknowledged that the special permit would apply to the heirs, successors and assigns of the property.

Bayer wondered whether a time limit could be placed on this permit to build in a review process. DeKalb suggested that a time limit typically applies to a project that will be completed such as soil excavation, etc. This use could presumably run indefinitely.

Considering the amount of acreage, Hunter wondered how many homes could be built on the property. DeKalb stated that there could be 2 single family dwellings on 45 acres. If you are going in under institutional use as a campus setting, the number of buildings is not limited. The four could multiply but they would be required to submit an amendment of the special permit with another public hearing.

Steward asked for clarification as to the approval of the water and sewer. DeKalb clarified that the Health Department has to approve the water and sewer before they can operate.

#### Response by the Applicant

Seacrest agreed with the staff's description that this is a lawful use under the lawful scheme of the Comprehensive Plan and the zoning ordinance of the County. He found it interesting to hear the state official say there are 642 wards of the state that cannot live with their parents. These are our own community's kids. These kids are issues--these are tough kids but it is not them that made them tough. These are primarily victims. This is an organization trying to advocate for these kids.

Seacrest again pointed out that the amended condition offered by the applicant states that they will not take on adjudicated sexual offenders. We are promising that today. We are imposing this condition on ourselves—it is not being imposed by the county.

Seacrest also acknowledged the two-year rule regarding education. If we have a choice between an LPS kid with 2 years and one with 6 months, we will choose the two-year student. When it comes to special ed needs, the State of Nebraska reimburses a school district 100% on special needs.

Hunter inquired why they are not expanding the Hickman facility. Seacrest's response was that the State of Nebraska wanted a facility closer to Lincoln. The RFP was worded such that they did not want it to be located in Hickman. They wanted it closer to Lincoln serving Lincoln kids.

Taylor asked Seacrest to speak to the transportation issues. Seacrest offered that the Hickman facility has been a very successful model. They believe they can duplicate that. For purposes of coordinating the programs, it is time to create a co-ed campus. Each house has a van. The transportation needs are the biggest operating cost and Christian Heritage will concentrate on that. Yes, they could use more donations for transportation. That is part of the program need and that has been the formula. The State would not award the contract if they did not have the confidence that Christian Heritage could do it correctly.

Seacrest clarified that the project will be phased. They only have the funds and resources for the first two homes at this time, but have the hope, dream and vision to add two more someday. This is the big picture, but we are not going to build it all tomorrow.

Newman was concerned about public process. Seacrest explained that they did have a neighborhood meeting, but the Saturday these neighbors got the Planning Department letter is the day he talked with the client for the first time. Seacrest believes they have been responsive to the concerns of the neighbors with the proposed amendment to the conditions. Maybe it's a little "shell-shock". They have just gone through the Beltway process; they've got the Stevens Creek Plan; and then the Comprehensive Plan. He understands their sensitivity.

Carlson inquired about the search ring for clientele--why out into the county? Seacrest acknowledged that wards of the state are not unique to Lincoln, Nebraska. We try to communicate that these county citizens do spend a lot of time in Lincoln using our services. The healthy community is mixed. We need these services in Lincoln and in the County—just like we want housing types in all areas. We are talking about providing a mix of services in a mix of geographic locations.

Carlson asked about building security. Seacrest advised that this is not Cedars Youth program. This is trying to create more of a family setting. Nicklas acknowledged that they do

not have cameras in any of the homes or intercoms. For the staff, they do put monitors on doors and windows so that if they open it does beep internally. There is no lock-up room; no time-out room. The night staff does bed checks every ½ hour. We are aware of the youth and provide supervision 24 hours a day. Seacrest clarified that while the caretakers go to sleep, another person comes in that is awake all night.

Carlson inquired whether all clientele attend off-site schooling. Seacrest clarified that there is no on-site education.

Carlson inquired about the activities that will transpire in the office building. Will there be fund raising type of a activities? Nicklas advised that the office will be for the administrative staff. Because Christian Heritage is a charitable organization, there are activities that would relate around planning fund raising requests, but it is all office oriented. It would be preparation for events that are occurring in the Lincoln area. It is not people coming to the office. It is preparation within the office for events or activities outside of the area. The traffic motions will be stable and limited.

Hunter asked whether this is intended to be the central office. Nicklas advised that the administrative staff for the children in Hickman would remain in Hickman and the staff for the children in Kearney would remain in Kearney. This would be the office for development of fund raising and the administrative staff working with the children on this site.

Hunter asked whether the house parents are trained to do counseling. Nicklas advised that they are not licensed mental health practitioners; Christian Heritage does provide pre-service training on the Boys Town model. Hunter wanted to know who does the counseling and how the kids get out of this place. Krogman advised that all professional services will be by professionals within the community. We transport the children to obtain those services. All of our children need to be able to attend a public school. If they cannot be maintained in a public setting, then their needs are too high for Christian Heritage.

Hunter asked whether the fund raising which will be done in this office has been done before. Nicklas stated that it has been operated out of the Hickman facility.

Carlson was confused by the definition of health care facility if the services are not provided on site. Seacrest reiterated that this falls under the “philanthropic institution” which includes health care, etc. We are trying to create a holistic program for these kids.

Bayer asked how many of the 16 students in Hickman attend LPS. The answer was “none”. But the number of those who have permanent residence in Lincoln fluctuates. Out of 16 at any one time, 5 or 6 are children who have come from Lincoln/Lancaster County. The others come from southeast Nebraska—Beatrice, Nebraska City, Waverly, and anywhere else.



Bayer asked for clarification about the home in Beatrice. Nicklas explained that it was an emergency shelter as opposed to a group home and the language was changed in the contract. When the language was changed, Christian Heritage chose not to continue to operate it because the language required them to accept all children.

Bayer clarified that of the 20 incidents where the Sheriff was called, 2 were sexual but they did not occur on site. Nicklas concurred. The children were the victims in these two situations.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

August 8, 2001

Taylor moved to approve the Planning staff recommendation of conditional approval, with the amendments proposed by the applicant, seconded by Duvall.

Duvall believes this facility is sorely needed. He understands the social factors and he knows it will be an impact to the neighbors but he does not believe it will be as great as their fears are right now. He is hopeful they develop a higher level of tolerance so these kids can develop their lives.

Schwinn commented that if this were a “for profit” organization, he would have more concern, but the 20-year history of the Christian Heritage organization speaks for itself. Secondly, he talked yesterday with someone telling him there were two of these homes located south of Pine Lake Road in a fairly new neighborhood and they have been within neighborhoods with absolutely no complaints whatsoever. He believes they will blend into the neighborhood and will be a good addition to our Health and Human Services.

Taylor commented that Nicklas has a very good reputation. It appears they have had a very good success rate. Some of the concerns appear to be based on fear of the unexpected and he does not believe those fears will be manifested just due to the nature of the operation from what he knows about the Hickman homes. We have at risk children. We have a society that is at risk. He believes this is a risk prevention type program. This is probably better than most foster homes. He believes that this will be a real good springboard for success, not only for the kids involved but as an opportunity for us as a community to support these kids as they grow up and become successful contributors to society.

Steward believes it is a Comprehensive Plan and community responsibility. Fortunately or unfortunately, the Comprehensive Plan does not specifically locate such public service facilities in its long term thinking so it is necessary to deal with these on the special permit basis. He believes the community is fortunate to have a nonprofit organization to act from a responsibility perspective and which is willing to step forward. There will always be controversy about the location if “it is different than the way my front yard looks”, whether in the

urban or rural part of the county. He believes there is ample justification for a rural location as an alternative. There are two important points—we 're looking for alternatives for care and rehabilitation and we do definitely have the problem. It's all of our problem. And we have an urbanizing thrust into the 148th Street area. If the property owners out there don't care for this kind of change, they should look at what's coming because it is really upon us. He empathizes and sympathizes with the concern for change but he believes this is a community justified position to take.

Carlson agreed.

Hunter believes that the Commissioners are all very concerned about doing the right thing. The one reason she will vote in favor is very simply that she had a lesson taught to her in the past year and a half with the Cedars location on 14<sup>th</sup> & South Street. That is a higher risk environment 10 blocks from her home and she was very afraid of it. Since that proposal went through, there has not been a single incident that has happened which has allowed her some ability to say that these things do work. She would vote against it if it were a higher risk type facility. She does not have a reason to say no.

Krieser stated that he will vote against because of the transportation issues. He thinks it is going to be a problem.

Newman clarified that this facility will not go in unless the water and sewer are approved by the Health Dept. Transportation is a concern but the applicant is committed to making this work. If they start with 16 children and see whether it is workable, then they can take it from there. She is in favor. She voted against 14<sup>th</sup> and South because she did not think it an appropriate location for kids. She thinks this is a good location for kids.

Bayer stated that he was swayed by the neighbors of Hickman. He did not hear one negative comment from a neighbor in Hickman. He thinks this is a known quantity and he will support the application. He is also swayed by the fact that Seacrest represented this group because he is forthright and would not represent a group he didn't believe in.

Motion for conditional approval, with amendments, carried 8-1: Taylor, Newman, Carlson, Hunter, Schwinn, Duvall, Steward and Bayer voting 'yes'; Krieser voting 'no'.

This is a recommendation to the County Board.

**SPECIAL PERMIT NO. 1924**  
**FOR SALE OF ALCOHOL FOR CONSUMPTION**  
**OFF THE PREMISES AT NO. 23RD AND R STREETS.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

August 8, 2001

Members present: Taylor, Newman, Carlson, Hunter, Schwinn, Duvall, Steward, Krieser and Bayer.

Planning staff recommendation: Denial

Jason Reynolds of Planning staff submitted additional information including five emails and letters in opposition (Exhibits A through E).

Reynolds also suggested that if the Planning Commission chooses to recommend conditional approval, Condition #2.2 should be added: The City Council waives or adjusts the 100' separation requirement from residential district.

Proponents

**1. Mark Hunzeker** appeared on behalf of Kabredlo's, Inc., the applicant. He introduced as exhibits the Factsheets from 22 previous applications for special permits for sale of alcoholic beverages, both on and off premise, which have been approved by this Commission and the City Council, waiving the setback requirements to one degree or another (Exhibits 1 through 23).

In this application, Hunzeker pointed out that the only issue that is raised as a reason for denial of this permit is that it fails to meet the 100' required setback from a residential zoning district or use, and the 150' setback from entry door to a residential district. Before this special permit ordinance was in place, it was fairly common place for convenience stores in residential areas to have alcohol available. For example:

Exhibit 24: 40<sup>th</sup> & "A" Street is a store very close to residential use;

Exhibit 25: 27<sup>th</sup> & "O" directly adjoins a residential use;

Exhibit 26: Touzalin and Fremont is immediately abutting multi-family on two sides;

Exhibit 27: Off-sale liquor store at 34<sup>th</sup> & "A" is immediately adjacent to a residential home;

Exhibit 28: 48<sup>th</sup> & Calvert immediately abuts residential;

Exhibit 29: 13<sup>th</sup> & E immediately abuts residential on two sides;

Exhibit 30: 4<sup>th</sup> & Cornhusker;

Exhibit 31: 27<sup>th</sup> & "E";

Exhibit 32: 17<sup>th</sup> & "L";

Exhibit 33: 27<sup>th</sup> & Y;

Exhibit 34: 70<sup>th</sup> & Colfax;

Exhibit 35: Cotner & Leighton; and

Exhibit 36: 70<sup>th</sup> & Havelock

These are all areas that had their liquor licenses before the special permit requirement came into place, so it was clear at that point that the city had not determined that there was anything wrong with the retail use close to the residential uses. So the public health, safety and welfare issue with respect to the use itself—retail sale of those goods—was determined to be okay because when the city modified the ordinance it only imposed a required setback for the sale of alcohol.

Hunzeker noted that we have had the special permit process since 1995. Exhibits 1 through 23 introduced into evidence were the staff reports and Planning Commission minutes of the hearings on 22 of these applications that have been approved, including:

Exhibit 37: 48<sup>th</sup> & Fremont, immediately adjoining a home on Fremont;

Exhibit 38: 60<sup>th</sup> & Havelock, immediately abutting residential on the north side;

Exhibit 39: S.W. 6<sup>th</sup> & West "A", immediately abutting residential on the west;

Exhibit 40: 33<sup>rd</sup> & Holdrege, immediately abutting residential zoning to the west where an office building is located and immediately abutting residential on the south with no intervening fence or any other mitigation;

Exhibit 41: 70<sup>th</sup> & Havelock, immediately abutting residential on the west; and

Exhibit 42: 13<sup>th</sup> & South, immediately abutting residential on the south.

In Exhibits 37 through 42, the setbacks are clearly substantially less than 100', not only to the residential zoning district but to the residential use. Out of the 22 factsheets introduced, only 5 of the 22 were more than 50' from a residential zoning district or use; 11 were 25' or less; and 6 were between 25' and 50'. So fully half of the approvals have been 25' or less. Seven of those had no mitigation whatsoever required as a condition of relief from that 100' setback; 50% were mitigated with only a 6' fence; 1 was mitigated with an 8' fence; and in two cases, it was determined by the staff that because the convenience store sat below the grade of the abutting residential and was in some fashion screened by a retaining wall at the property line where the residential sat above the convenience store, that was sufficient mitigation; and in one case there was landscaping.

In short, Hunzeker submitted that the process has been one of almost routinely granting relief from this 100' setback requirement in cases that are much less close to meeting the requirements than this one. Here, we have a situation where the store in question is approximately 96' from the property line of the abutting residential house. The distance from the store to the zoning district line is 74'. The distance from the corner of this store to just past the corner of the commercially zoned area is 96'. This applicant is proposing a 6' fence and a double row of blue spruce on the residential side of the fence. Hunzeker believes the fence and trees mitigate whatever impact there might be of adding alcohol to the products sold at this location. There is already quite a bit of traffic at this location, and he does not believe that the addition of alcohol to the product mix will have any impact.

Hunzeker cited from one case where on-sale was added to the product mix at 26<sup>th</sup> & X Street (Special Permit No. 1688, Exhibit 17, p.4),

“...The building is 15 feet from the R-6 district, which is located beginning at the centerline of the alley. Our normal buffering in similar situations has been to require a wood fence. In this case, however, there are no doors or windows on the south side of the building, so it's relatively inert. Automobile and pedestrian traffic in the alley from the neighborhood to the west and south is more likely the major disruptive factor, yet the parking for the three residences is from the alley, so a fence is impractical. Staff does not feel the addition of liquor sales to the existing store's operation will markedly increase the alley traffic, so this may be a case for waiving the screening requirement.  
....”

Hunzeker believes this applicant has met the burden of mitigating the lack of a 100' setback. There isn't much of a reason to have the 100' setback other than having an impact on limiting liquor licenses and sales in areas in ways that the city cannot otherwise do. Hunzeker purports that this applicant has met the burden of showing that this is not going to have an adverse impact and this applicant is mitigating more than any other applicant that has been given permission that has less than a 100' setback.

Opposition

**1. Ed Patterson**, 2108 “Q” Street, President of the Malone Neighborhood Association, testified in opposition. There have been arguments presented that purport to be comparable situations and the logic that it has been done many times in the past and therefore it should be done in the future. Almost all of the pictures were on arterial streets. This is not an arterial. This is in the heart of a neighborhood; across the street from a church; directly across the street from a residence; and the parking lot directly abuts a single family home. Although it has not been said today, Patterson has heard that Kabredlo’s indicates that they cannot make it economically without the sale of liquor. Patterson did some comparison shopping. A one pound jar of peanut butter sold for \$1.39 at Alps on 27<sup>th</sup> Street; \$2.69 at Walgreens; \$2.19 at Ideal Grocery (which delivers) and \$3.05 at Kabredlo’s.

Patterson also read from emails he had received in opposition (Exhibit F).

Bayer inquired whether any of the stores where Patterson bought the peanut butter sell liquor. Patterson did not know.

**2. Mike Morosin**, past president of Malone Community Association, testified in opposition. There are a number of problems in this neighborhood. And there are another number of places in the near neighborhood that sell alcohol. To put this in the heart of a neighborhood presents a problem. He deals with this every day. Some days he has to have people taken by ambulance who were able to get alcohol quickly. There is an adult domiciliary about ½ block east of 23<sup>rd</sup> and “R”, and many of the adults are allowed to come out and come to Day Watch and Matt Talbott Kitchen, and many of these people have a chronic alcohol problem. This puts the alcohol right in front of the alcoholic. In the park on a daily basis he picks up broken beer bottles, etc. from the alcohol drinking. Urination in the park still occurs even though they have a bathroom and he believes this is because it is too easy to get the alcohol. Maybe Kabredlo’s needs to get competitive on their prices on the other products to bring the people in. Morosin implored the Commission to come to the neighborhood and spend a day and see the problems that occur. The liquor establishments need to stop serving people that are inebriated. Some of the establishments even give plastic cups when they sell packaged beer. Isn’t it time to say “no”? We have enough established liquor outlets in Lincoln. If Kabredlo’s is truly interested in being a good neighbor, they would have come to all of us in the neighborhood and asked about this. If we’re going to fight the problems of chronic alcoholism that hits this neighborhood on a daily and nightly basis, now is the time to take a stand. It was good that the Mayor took a stand on the last application and he hopes this one doesn’t have to go that far.

Duvall asked whether the police are involved in the illegal activities in the neighborhood. Morosin stated that the police are very much involved. The neighbors call in on a daily basis. We need government on the other end to say “no”.

Hunter asked Morosin to estimate how far this is from the UNL campus. Morosin stated that it is “not very far--20<sup>th</sup> and S versus 23<sup>rd</sup> and R.

**3. Barbara Layman**, 23<sup>rd</sup> & W, 5 blocks north, testified in opposition. She acknowledged the mitigation by putting up a 6' fence and blue spruce, but there are other things that need to be addressed, including the trash that litters the neighborhood. The 27<sup>th</sup> & “Y” location sells alcohol and it is not in the heart of the neighborhood. She picks up beer cans, wine bottles, beer bottles, and broken glass. There are about 15 small children who live on her block. Riding bikes becomes a hazard for them if they fall on the glass. There is also the issue of these people walking the street late at night. There are fights, arguments and vandalism that take place in our yards. We put a lot of work into our properties and we do not appreciate the disrespect that comes from this situation. If you want to be a grocer, you should have a grocery store, particularly in a neighborhood where we are concerned with families and the raising of our children. They should establish their liquor business in another place. We don't need the examples that this sets for the children in the neighborhood. Many of the buildings in our neighborhood house university students.

**4. Leola Bullock** appeared on behalf of the **Social Concerns Committee of the Newman United Methodist Church** located at 2242 R Street, in opposition. Bullock presented a letter from the Church and a petition signed by 36 individuals in opposition (Exhibit G). This will not be an asset to the residents, the church members and their guests. They will not provide any unmet need for sale of alcohol for consumption off premises. The sanctity of the neighborhood is a better and higher priority than the convenience of off-sale alcohol. The church is open to adult and youth members, friends and guests daily, with worship, fellowship, religious training and education, social activity, community activity and city service. This is not the proper location for this type of activity in the community.

**5. Cornelius Shepard**, 5412 Hillsdale Drive, member of Newman Methodist Church, testified in opposition. Shepard used to cut the parking lot and yard at the church. They had trouble picking up cans and bottles all over the parking lot. That store has been on that corner for over 70 years as a grocery store. The filling station is all right, but this is too close to a church to have a liquor store. We have problems with people drinking in the parking lot now. We have problems with drunks staggering into the church.

**6. Hugh Bullock**, 4210 No. 73<sup>rd</sup>, testified in opposition as a member of the Newman Methodist Church since 1958. This liquor store is too close to the church.

#### Response by the Applicant

Hunzeker is aware that there are problems with alcohol abuse in this community and it appears that people in that neighborhood have no problem obtaining alcohol, with or without this application. This applicant believes it is entitled to this permit. There is statutory criteria

determining how close a liquor establishment can be to a church and if we don't meet that criteria we won't get a license. The testimony in opposition has absolutely nothing to do with the setbacks or the impacts of this store. Everything the Commission has heard today dealt with alcohol—"don't let them sell alcohol". That is not the legitimate criteria by which to judge this application.

Hunzeker then quoted from the City Attorney opinion dated January 26, 1995 (Exhibit 3, pp.14-15), when the Commission was considering the application at 70th & Havelock:

"...where the zoning code contains both general standards regarding the public health, safety and general welfare and specific criteria regarding the use in question, the specific criteria are not additional to the general language but are definitional in nature. .... The testimony of Mr. Bradley at the public hearing on Special Permit No. 1536 is that 'none of the opposition was toward design items or toward placement of the building, but only with respect to the sale of alcohol.' Since mere neighborhood opposition to the sale of liquor is not a sufficient basis to deny the special permit, it would be an abuse of discretion for the Planning Commission to deny [the special permit] simply because it was near a residential neighborhood. .... Neighborhood opposition to the use itself is not a sufficient basis to deny the special permit."

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

August 8, 2001

Taylor moved to deny, seconded by Newman.

Taylor does not consider himself a lawyer, but he knows that most of our laws are based upon certain moral principles and one of the things you seek to do is help those that are weakened among us and to encourage them to be stronger. He appreciates the Malone area and the revitalization in that area. He does not see where alcohol would be an asset. He sees the church as an asset. We need to consider the appeal of the neighborhood. One of our jobs as Commissioners is to take the concern of our community and preserve our community with a sense of fidelity, care and concern about our citizenry. With the outcry he is hearing, he is not hearing anything positive other than that certain rules have been followed correctly. He agrees with all that has been said in opposition. This is not an arterial location but right in the heart of a neighborhood. He believes in free enterprise and in individual accountability and he believes a person is responsible for his/her own destination, but he does know that people in our society need help and any way we can help our fellow man, he believes that is the Commission's role and responsibility.

Steward stated that he will vote in favor of the motion to deny based upon the principles of the Comprehensive Plan and the requirements that give it operational value. We have a 100'



separation requirement from a residential use and counsel has pointed out that in this situation the distance is 96'. It has also been pointed out that the Planning Commission and the City Council have been waiving that requirement in the past. He is not prepared to vote for a waiver (and if it were 99' he would vote the same way) until or unless the requirement is changed. We have a responsibility to support the rules.

Newman commented that if a mistake was made in granting waivers in the past, we don't need to make another one.

Carlson believes the crux of the argument is location, not necessarily liquor. He agrees with Steward and the last time he checked, convenient access within the neighborhood is not a component of the Comprehensive Plan and the sale of alcohol does nothing to promote the health, welfare and safety of this community. The thrust of the applicant's argument is that because we have approved these in the past, we need to approve them in the future. He disagrees. He does not think the waiver should be granted and it is clear that this application should be denied.

Hunter believes that Ms. Bullock made some extremely good points. The waiver is provided as an exception in cases where it should be provided and that doesn't mean it is always the rule. It is not going to be an asset to the residents of the community because there are already problems with alcohol locations close by. The applicant will not provide any unmet need.

Bayer does not believe the Commission is here to make a decision on the value of drinking or not drinking alcohol. He will be offended if he is criticized for voting in favor, but he believes his role is to determine whether or not there are reasons to mitigate or waive the distance requirements. He has supported waivers in the past and he will do so in this case because he thinks that the applicant has fairly mitigated the distance. Do I think there are alcohol problems in this country? Of course, but it is not the Planning Commission's responsibility to fix it today with respect to this vote. This vote does not fix it.

Motion to deny carried 5-4: Taylor, Newman, Carlson, Hunter and Steward voting 'yes'; Schwinn, Duvall, Krieser and Bayer voting 'no'.

**WAIVER OF DESIGN STANDARDS NO. 01016**  
**TO WAIVE THE STREET TREE REQUIREMENT**  
**ON PROPERTY GENERALLY LOCATED AT**  
**SOUTH 13<sup>TH</sup> AND ARAPAHOE STREETS.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

August 8, 2001

Members present: Taylor, Newman, Carlson, Hunter, Schwinn, Duvall, Steward, Krieser and Bayer.

Planning staff recommendation: Denial.

Proponents

1. **Larry Small**, representative of the applicant, First Federal Lincoln Bank at 13<sup>th</sup> & Arapahoe, presented the application and showed pictures of the locations where the street trees are required to be planted. There are no other trees in this particular block. First Federal has planted some trees but not in the area between the sidewalk and the street along the north side. First Federal has also done some minimal landscaping in the area. Some pine trees have been planted along 13<sup>th</sup> Street in the same general area but away from the bank in an attempt to give some shielding. Small also showed graphic renderings of what this might look like if they did plant the trees as required. Small submitted that the growing cycle would be several years before becoming 8-10' high.

Small testified that First Federal is a bank. Banks get robbed and one of the deterrents is visibility. The bank needs to have the absolute most visibility as possible. This is a 24-hour ATM operation; the facility is already down an embankment; we've tried to do some landscaping to beautify but have specifically stayed away from the bank as far as trees go. A bank right next to this facility has been robbed in the past year and one-half. First Federal does not want to do anything that would pose any kind of a safety hazard to its customers or employees. First Federal does not surround its banks with trees.

Steward assumes that advertising is another objective. Small's response was that visibility to the building and their pole sign is certainly an issue. This is a branch bank built seven to eight years ago. So, Steward suggested that when the bank was built it was known by the owners of this bank what was going to be around it—the proximity of other buildings and trees—it was part of a subdivision. Small agreed that they knew about the area in which they were building. And, Steward suggested that the bank's architects and builders should have known about the street tree requirement. Small indicated that they signed on with a proposal to plant the trees and posted a \$1200 bond. Steward then observed that if the concern about trees providing shelter for potential robberies were followed throughout the city, we would not have any downtown trees because every store is a potential point of robbery. Small agreed, but he would need to see the statistics as to how many stores have been robbed. Steward wondered how many times the robber has hidden behind the tree or the tree has been an asset to the robber—Steward believes this is making a great leap. Small stated that he sees the issue of a tree as landscape and beautification. First Federal has planted trees and bushes in the area and has worked toward keeping it a well-landscaped beautiful area. The bank needs to be conscious about what it is hearing from law enforcement about doing everything they can to keep the bank as open and visible as possible.

Newman asked how many trees this involves. Small indicated that it would be six trees--four along the 13<sup>th</sup> Street property and 2 along Arapahoe. One would be directly north of the bank building and another is directly in front of a building to the west that is also owned by First Federal.

Newman asked whether there is an entrance on the 13<sup>th</sup> Street side. Small stated that there is not an entrance on the 13<sup>th</sup> Street side. All of the traffic comes in from the north, parks in front of the building and circles around to go through the drive-through and the ATM.

**2. Sarah Porto**, Security Director for First Federal Lincoln Bank, testified in support. The bank immediately next to them has been robbed twice in the last year and the police and FBI have told First Federal Lincoln that its open location is probably the reason they have not been robbed. The office is set down from 13<sup>th</sup> Street so it is a little different from any other location where there might be trees where the entrance is level. The growing trees would make it more difficult to see. The area that would be covered by the trees is an ATM. ATM vandalism is becoming very prevalent. There is not an entrance on 13<sup>th</sup> Street but there is an employee entrance that would be shielded because of the trees. On a personal level, she lives in the area and this is a very attractive branch. It has added a great deal to the area and is far more attractive than anything else in the neighborhood. The lack of trees in front is more than compensated for by the shrubbery and other landscaping that has been done.

**3. Mary Irvin**, Branch Manager of the First Federal Lincoln Bank, testified in support. Because of the number of robberies that have occurred in Lincoln, all of the employees have been required to have extra training. The training as specifically indicated that the openness of the branch is very important. If there are areas where they cannot see into the windows, that is a prime target for a robbery. Trees would just make it so much more of a target.

There was no testimony in opposition.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

August 8, 2001

Schwinn moved to approve the waiver, seconded by Duvall.

Schwinn drives by this branch often and he doesn't even notice that it is there. He believes the reasons given for security are compelling enough and this is something that we should pay attention to.

Steward believes it is a mistake to grant this waiver. It is a mistake for the community to get into a defensive design mode. He believes the advice given was probably given with good reason and cause, but there has been evidence throughout this country's history that defensive

community design only promotes defensive behavior. It does not promote community. If you take this far enough, we would have every bank on a high hill with razor wire around it and limited access. Where do you stop? You're just one step away from a very impossible situation and he believes our principles for city welfare are large enough, definitive enough and defensible enough that this waiver is not necessary.

Hunter has a problem relating to the concept of the robbery being overly enhanced by the lack of trees because she knows a branch which has been robbed twice in the last year that has zero landscaping. The consistency that the city intends to have with landscaping and the purpose is so that we don't have building after building with parking lots being our landscape. We all point to No. 27<sup>th</sup> as an example. The design standard is there for the purpose of consistency.

Carlson commented that First Federal Lincoln built the bank in 1994 and knew the standards. There was a preliminary plat and final plat that were signed and agreed upon by the bank. At the same time, the bank agreed to put in the trees by 1998. The bank agreed to put them in so he believes they should be planted.

Taylor stated that he is sensitive to the needs of our community being safe. But we do have design standards as well. Then, when he hears the argument by Hunter stating that it is negligible whether trees would have anything to do with the safety because of banks that are robbed that do not have any barriers to reduce visibility, he must agree to deny the waiver.

Bayer stated that when he landscaped his home, he was told not to plant big trees next to the house for security purposes, so he is not going to argue with the applicant's reasons. Motion for approval failed 4-5: Schwinn, Duvall, Krieser and Bayer voting 'yes'; Taylor, Newman, Carlson, Hunter and Steward voting 'no'.

Hunter moved to deny, seconded by Newman and carried 5-4: Taylor, Newman, Carlson, Hunter and Steward voting 'yes'; Schwinn, Duvall, Krieser and Bayer voting 'no'.

**SPECIAL PERMIT NO. 1786A**

**AN AMENDMENT TO THE BLACK FOREST ESTATES**

**COMMUNITY UNIT PLAN**

**ON PROPERTY GENERALLY LOCATED**

**AT SOUTH 62<sup>ND</sup> STREET AND OLD CHENEY ROAD.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**

August 8, 2001

Members present: Taylor, Newman, Carlson, Hunter, Schwinn, Duvall, Steward and Bayer; Krieser absent.

Jason Reynolds of the Planning staff requested an additional two-week deferral for further discussion between the applicant and staff.

Schwinn moved to defer, with continued public hearing and administrative action scheduled for August 22, 2001, seconded by Newman and carried 8-0: Taylor, Newman, Carlson, Hunter, Schwinn, Duvall, Steward and Bayer voting 'yes'; Krieser absent.

There was no public testimony.

**PRELIMINARY PLAT NO. 01007**

**CARROLL M5 INDUSTRIAL PARK,**

**ON PROPERTY GENERALLY LOCATED**

**AT NO. 27<sup>TH</sup> AND CLEVELAND AVENUE.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:** August 8, 2001

Members present: Taylor, Newman, Carlson, Hunter, Schwinn, Duvall, Steward and Bayer; Krieser absent.

Proponents

**1. Tom Cajka of Ross Engineering** advised that the owner/developer met with the residents of the mobile home park on August 2<sup>nd</sup>. Urban Development and the Lincoln Housing Authority also attended the meeting. The bulk of the meeting was to try to answer questions from the residents. Richard Carroll, the owner, answered the questions as best he could. Questions were also presented to Urban Development and the Housing Authority.

Before asking for further testimony, Bayer clarified the role of the Planning Commission on this application. The Commission's authority is very well defined with respect to a property owner and the property owner's rights.

**2. Marc Wullschleger, Director of the Urban Development Department**, appeared in a neutral position. His office has talked with Linda Brooks on almost a daily basis since this process began, and then Ross Engineering invited Urban Development to attend the neighborhood meeting. Wullschleger was sorry to say that Urban Development does not have a lot of tools to help the mobile home owners or renters. There are two options: 1) we can refer them to Neighborhoods, Inc. where they can purchase other homes, or 2) we can refer them to the Lincoln Housing Authority where there are several options for these mobile home owners and renters. Because there are no government funds involved in the replatting of this industrial area, Urban Development does not have any tools to help these people with relocation. Urban Development is also not allowed to relocate the mobile homes.

Schwinn asked Wullschleger to expand on his comment about not being able to relocate the mobile homes. Is there any specific code that doesn't allow us to move these homes? Wullschleger's response was that it is an urban myth that any mobile home over 15 years is not allowed to be moved. They are allowed to be moved at any age. But he has been told by a lot of the home owners that it is a problem to move and it is expensive. It might be hard to find a mobile home park that would take some of the older homes.

Steward then sought confirmation that the city has no relationship or no leverage over any existing mobile home park sites. Wullschleger agreed that to be true as far as helping the homeowners relocate their homes.

Bayer then asked whether there is anything the community can do to persuade the owner to do anything other than what he is by law allowed to do. You can't stop this property owner? Wullschleger agreed. The property is zoned industrial; the surrounding property is zoned industrial; and there are floodplain issues. When the Carrolls developed this property in the early 1950's, it was outside of the city limits and "they had not invented floodplain at that time". Because it was outside of the city at that time, it was zoned industrial.

### Opposition

**1. Linda Brooks** testified in opposition. She has played a big part in trying to get some help for the tenants. She has talked with Urban Development. A gentleman in Fair Housing in Omaha told her to get a hold of the mediation center here in Lincoln, but both sides have to agree to mediation before the mediation center will get involved. When contacted by the mediation center, the owner said there was no need for mediation and that this would be between the owner and a few of the residents. The mediation center asked the owner if there would be an official letter to each person in the trailer park about the neighborhood meeting. The owner told them "no". He had someone else in the trailer park spread the word. Brooks stated that she did the notification of the meeting and she put out questionnaires for every resident in the trailer park. 90% of the people in the trailer park do not even know who the owner of the property is. No one has stepped up to help us. We have over 100 people involved in these trailers. We cannot sell our trailers because no one will want to take them off the property.

We cannot afford to move them because it will cost \$1200-\$1500. She believes that the owner is responsible for these people being on the property. She believes there should be compensation to the people that own the trailers or some relocation fund set up for them. None of the mobile home owners or renters are guaranteed anything. The owner has done a lot of damage by not informing us that we were on a phase-out plan or that he was adding 12 lots. She acknowledged that they were advised about the one on the north end. They have chopped down one trailer; they've flagged another one; this opens up the land and tells us that this five-year phase-out is not going to be a five-year phase out.

**2. Leroy Downey**, 2525 Cleveland, testified in opposition. He purchased a home in this trailer park on July 1<sup>st</sup> of this year. He did get the letter and he contacted the manager, who told him that nothing was going on except for the lot on the north end. In the meantime, he has received the blueprints for all 12 lots and he believes the residents will all be out of there within 18 months.

**3. Robert Nestor(sp), Sr.** testified in opposition. He requested that the Commission must consider not approving this because of the senior citizen component. His wife has had 5 bypasses, has colon cancer and diabetes, and is 95% blind. His nephew was born hard of hearing and has a speech defect.

**4. Mr. Rodriguez**, 2525 Cleveland, testified in opposition. The owner has made it quite clear that he would not be purchasing the trailers or moving the trailers. There are no options left. The owner indicated that he may consider giving a 90 day notice—"maybe". The residents requested at least a one-year lease to give them time to get on waiting lists for other places to live, and the owner told them "no", because whenever he "received enough money to build we were done."

**5. Carroll McBride**, 2525 Cleveland Avenue, testified in opposition. The residents have been lied to; been misinformed; and been taken advantage of. The first place you go to is your city government and he believes the city government should help. The best place to address a problem is in the beginning. He believes that the Commission appears to have already made a decision. He wishes the Commission had an open mind.

Bayer responded that it is not that he doesn't have an open mind. The Commission is doing what they are allowed to do and within the realm of what a property owner has the right to do. This board has no control over money. The Planning Commission does not have the authority to dictate the answers. These residents need to work with the City Council. The City Council has more opportunities to help, if they can.

McBride believes the Commission has a tremendous opportunity at this time to affect change. Bayer stated that the Commission has to do certain things within the law. This is a land use issue for land that is zoned I-1 and the property owner has certain rights. The Commission does want to do as much as they can for the residents. The hearing was delayed for two weeks to encourage the owner to work with the residents and the residents are encouraged by the Commission to go to the next level. McBride believes that at this level the Planning Commission could deny further building and allow the warehouse at the north end. It is the developer that has made promises.

Staff questions

Newman noted that the Commission is being told that they have to move this forward because it is an administrative action; however, the owner is asking for a waiver of sidewalks. Can we deny the plat based on the waiver requests? Jason Reynolds of Planning staff stated that the conditions of approval require that the sidewalks be shown on the plat and the applicant is not disputing that. The subdivision ordinance provides that if, after public hearing, the Commission finds the proposed preliminary plat complies with the ordinance, it shall approve the preliminary plat.

Newman noted that in February a similar situation came up where there was a preliminary plat seeking waivers of the floodplain requirements and she asked that a new floodplain ordinance come forward with no net rise. She understands there will be a committee formed in the next year. Can we put this plat on pending until after that committee meets and comes up with a solution? Dana Roper, City Attorney, advised that if the preliminary plat meets the existing requirements of the subdivision ordinance, the Commission needs to act and move it forward.

Bayer against sought confirmation that there is no opportunity for funding from the federal level, i.e. grants. Would the city have the right to find money to do this, or does that set a wrong precedent for eviction from a neighborhood because of property owner rights? We're in a tough situation here. Wullschleger explained that the city is in the middle of a budget cycle. We are not treating these homeowners any different than any other homeowners. This is an unusual case. If it did involve any type of city, state or federal funds, we would be there to help with relocation.

Steward commented that this strikes at the very fiber of everything that he personally and professionally holds valuable on human rights. Not that the city is at fault, but it points out that we have a gap and an oversight in our laws and regulations that provide for such eventuality, never having anticipated such an event. He disagrees that what we are doing is treating these folks as we would every other homeowner—they are not in a typical homeowner situation. The type of home that they are in and the economic conditions that most of the people are in is different. Steward believes it requires a different set of civic responses. But without an ordinance, none of us have the capability of dealing with that. So the question is, what would it take and who would Urban Development go to if the goal was to help create an ordinance? How can the city advise on an approach that becomes legal in an orderly, sensitive way? Wullschleger stated that “the buck would start here at Urban Development”. He believes that they would convene a task force or pass this to the Community Development Task Force to look at some type of funding, whether it be city or federal. Steward urged that there is some urgency greater than our normal slow wheels of forming committees and progress.

Steward further noted that the Commission has been told that the owner intended only to do the north end, and that while they were doing it staff wanted them to plat the whole thing if that



was the eventual condition. Reynolds explained that the owner needed to provide a phasing plan to phase out the mobile home court in order to develop the lot at the north end. There was an area on the north that did not have any mobile homes and was covered by the special permit. They needed that area removed from the special permit and submitted a phasing plan for removal of the rest of the special permit. Steward asked whether the Commission could limit the approval of the plat to Phase I. Ray Hill of Planning staff advised that the land subdivision ordinance indicates that any time you create a parcel 10 acres or less it must be approved by the city. The total area is only 9 acres so there is no way the Commission could leave out any part in the subdivision process.

Duvall commented that the Urban Development funding is block grant funds to benefit low to moderate income, slum, and blight, so he believes the objectives are there. He believes those funds should be earmarked to help these folks. We need to set up a policy to help in this situation. Wulschleger responded, stating that Lincoln Housing Authority does have funds. He believes that LHA is able to help these people relocate their mobile homes. (The audience disagreed with this statement). HUD will not allow Urban Development to do that.

**McBride** was allowed to speak again. Approximately 10 years ago there was a bill introduced into the Nebraska Legislature because mobile home owners in an adjacent town were in the same battle. It never made it through the hearing. However, a similar bill has made it through and is law in California. If the Commission is looking for a way to help the people that take the low paying jobs, the Commission might take a look at that legislation.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

August 8, 2001

Hunter moved to approve the Planning staff recommendation of conditional approval, seconded by Schwinn. Reynolds clarified that the staff recommendation approves the waiver to reduce the centerline radius and stormwater detention. Hunter clarified that her motion would not approve any waivers, thus Condition #2.1 and #2.2 which grant the waivers would be deleted. Schwinn, who had seconded the motion, concurred.

Carlson asked whether the Commission could vote to deny the plat based on the waivers and force the applicant to resubmit and require them to show everything to be in conformance. Reynolds advised that the recommendation of the Planning Commission is advanced to City Council whether it is approval or disapproval.

Schwinn pointed out to the Chair that the applicant was not given the opportunity to rebut the testimony in opposition during the public hearing. Cajka indicated that he had no further testimony.

Hunter believes that the Commission has been in the position of “having their hands tied” in a few situations. In this case, the place the opposition can make something happen is not this Commission. Addressing the opponents, Hunter stated, “you are not property owners, but renters”. Notification on these applications goes to property owners and surrounding property owners and that is the specific reason why the notification did not take place. The Commission is not here to pass moral judgment. In reality, the property owner has a right to use his property in the method that he chooses to use it and develop it. She does not know whether there is a way to solve the movement of these people in this mobile home community. This issue is so significantly special and different than most of what the Planning Commission sees. Maybe the result is not with public money. This application is going to move to City Council one way or the other. Again addressing the opposition, Hunter urged that for future reference, “always have a lease; always have something that gives you the right to have some sort of time period. On a 30-day lease period you are at the mercy of the owner.” Hunter would like to see something happen in this city. This city is large enough to do that. This is not a motion she is proud to make but one she has to make.

Steward agreed with Hunter's point that this is a community values responsibility and as civic servants and residents of this community, it is imperative that we find a way to work it out.

Carlson also commented that City Council is going to be the appropriate venue in which to have this discussion and hopefully there can be some resolution. He reiterated that anyone who is renting needs to get a written lease—“read it and don't sign it until you understand it because it is your protection”.

Newman stated that “it makes me sick to make me vote for this. Our hands are tied. My apologies.” She is hopeful that the residents will get together with Urban Development and form a tenants rights organization and get moving. There are rental property owners organizations out there. It is time for your rights to be heard.

Duvall will vote in opposition because there are greater issues here.

Schwinn will vote in favor because the Commission does have its hands tied. If the Commission voted against it, it would be appealed to the City Council. If the City Council voted against it, it would be brought into the court of law and the 5<sup>th</sup> Amendment gives people rights over their own property. He is sure the City would be destroyed in a court of law on something like this. “There is no greater advocate of affordable housing and the needs of lower income housing than me. I will probably be involved in this in the future and we will try to find some way to make it work.”

Taylor would prefer to vote to deny this. He believes the Commission could vote to deny as a matter of protest. This is a grave injustice against these people.

Hunter believes it may be a positive step to move forward with this and move it into a purview where something can be done. She sees no responsible way to deny this. If the homeowner took this to a legal battle, it's a battle that the residents could not win because it is a landowner's rights situation.

Bayer called the question.

Hunter clarified that the motion does not allow any waivers or exceptions.

Motion for conditional approval, denying all waiver requests, carried 7-1: Taylor, Newman, Carlson, Hunter, Schwinn, Steward and Bayer voting 'yes'; Duvall voting 'no'; Krieser absent.

**ITEM NOT APPEARING ON THE AGENDA**

August 8, 2001

- ! Steward announced the Andres Duany lecture on "New Urbanism" being held at the Joslyn Art Museum on September 6, 2001, at 7:00 p.m., and encouraged the public and the Commissioners to attend.
- ! Taylor thanked the Planning Department staff for the card of condolence for his mother's death.
- ! Schwinn moved to waive the Planning Commission rules and schedule the next regular meeting on August 22, 2001, for **9:00 a.m.** instead of 1:00 p.m., seconded by Carlson. The City Council and County Board are holding a joint public hearing on the South and East Beltway in Council Chambers that afternoon. Motion carried 8-0: Taylor, Newman, Carlson, Hunter, Schwinn, Duvall, Steward and Bayer voting 'yes'; Krieser absent.

There being no further business, the meeting was adjourned at 5:55 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on August 22, 2001.